

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
v.) CRIMINAL NO. 13-10200-GAO
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)
DZHOKHAR TSARNAEV)

MOTION TO SUSPEND JURY SELECTION

Defendant, Dzhokhar Tsarnaev, by and through counsel, respectfully requests that this Court suspend jury selection for at least one month in light of the recent terrorist attacks in France. This measure would allow some time for the extraordinary prejudice flowing from these events – and the comparison of those events to those at issue in this case – to diminish.

On January 7, the third day of jury selection in this case, terrorists killed 12 people at the *Charlie Hebdo* office in Paris. The next day, a French policewoman was fatally shot in another Paris attack that has been linked to the *Charlie Hebdo* assault. On January 9, four hostages were killed by a terrorist at a Paris kosher grocery store. The suspects in the *Charlie Hebdo* attack, who were themselves killed on Friday, January 9 by security forces, were brothers. In the aftermath of the violence, France has mobilized 10,000 soldiers and 8,000 police officers throughout the country. There have been warnings of “sleeper cells” in France and Al Qaeda plots in other Western countries. A German newspaper was firebombed and a bomb threat was called in to a Belgian newspaper. See Holly Yan, *Charlie Hebdo attacks: Get up to speed on the latest*

developments, CNN (Jan. 12, 2015), available at

<<http://www.cnn.com/2015/01/12/europe/charlie-hebdo-france-attacks-up-to-speed/>>.

Almost immediately after the attacks, the press, politicians, and commentators drew parallels between the French attacks and the Boston Marathon bombing. The supposed parallels included the fact that the suspects were brothers, that they reportedly were influenced by the lectures and writings of Anwar al-Awlaki, that they were “home-grown” terrorists, and that they attacked civilians in a Western city. *See, e.g.*, Kevin Johnson, *Paris and Boston attacks pose striking parallels*, USA TODAY (Jan. 9, 2015), available at <<http://www.usatoday.com/story/news/nation/2015/01/08/paris-boston-attacks/21445461/>>. In a video presentation, CNN emphasized those parallels in particularly dramatic and graphic form. *See* Erin Burnett, *Similarities between suspects and Tsarnaev brothers?* CNN INTERNATIONAL (January 8, 2015), available at <<http://edition.cnn.com/videos/us/2015/01/08/erin-dnt-feyerick-kouachi-tsarnaev-comparison.cnn>>.

The *USA Today* piece quoted 9th District Massachusetts Congressman William Keating: “Against the backdrop of jury selection for Dzhokhar Tsarnaev, it’s like Boston is reliving what happened all over again . . . I’m watching what’s happening in Paris, and I’m thinking of Watertown.” USA TODAY, *supra*. WBUR quoted Congressman Keating as describing the similarities as “almost eerie,” and detailing how the attacks resonate in Boston:

The fact that the suspects are brothers, they became radicalized, their contact with foreign insurgents, the massive manhunt that sprawled into the suburbs the way it did in Watertown, the tragedy of another police officer being shot and killed, all of

those things I'm sure brought thoughts of the marathon and the tragedy home to people back in Massachusetts.

Bruce Gellerman, *Some See Parallels Between France, Marathon Terror Attacks*, WBUR (Jan. 9, 2015) (quoting Congressman Keating), available at <http://www.wbur.org/2015/01/09/watertown-france-attacks>.

Former Boston Police Commissioner Ed Davis called the parallels between the two cases "shocking." USA TODAY, *supra*. Evan Kohlmann, a terrorism consultant whom the government plans to call as a witness at the trial of *this* case, also weighed in. While he was quoted in *USA Today* as saying it was too early to determine how similar the two attacks are, he also added that, "Obviously it's tempting to look at the . . . suspects in France through the lens of the Tsarnaev brothers." *Id.*

A similar article in the *Boston Herald* described the "chilling similarities" between the Boston and Paris attacks. The article, which ran on January 9, asserted:

Both attacks have been blamed on homegrown terrorist brothers – in each case with a brother who had drawn law enforcement attention for Islamic radical ties before. In both cases, both police and citizens were targeted with equal cold-blooded vigor.

O'Ryan Johnson, *Paris attack has parallels to marathon bombings*, BOSTON HERALD, Jan. 9, 2015, available at

http://www.bostonherald.com/news_opinion/local_coverage/2015/01/paris_attack_has_parallel_to_marathon_bombings.

These parallels so widely expressed cannot be lost on potential jurors. Even though the panels have been instructed not to read media reports about *this* case, the probability of exposure to reports of the Paris events, which began before all of the jurors

were instructed, is exceedingly high. Reports on the Paris attacks and other recent incidents are ubiquitous. The reaction described by Congressman Keating is one that is likely shared by countless Boston area residents, including those in the jury pool. Indeed, area residents who attended a rally on Boston Common “in solidarity with France” were quoted in the *New York Times* as saying that the events in France “created more fear” and “gives [Tsarnaev] a global context.” Katherine Seelye, *Paris Attacks Expected to Influence Boston Trial*, NEW YORK TIMES (Jan. 12, 2015), available at <http://www.nytimes.com/2015/01/13/us/paris-attacks-expected-to-influence-boston-trial.html?_r=2>. According to the Associated Press, some of those attending the rally held banners saying, “Boston is France” and “Boston Strong.” Associated Press, *Boston rally held to support French after terrorist attacks*, BOSTON HERALD (Jan. 11, 2015), available at <http://www.bostonherald.com/news_opinion/local_coverage/2015/01/boston_rally_held_to_support_french_after_terrorist_attacks>. Carlos Arredondo, a local hero of the response to the Marathon bombings, was interviewed at the rally. See *French Terror Victims Mourned at Boston Rally*, NECN (Jan. 12, 2015), available at <<http://www.necn.com/news/new-england/French-Terror-Victims-Mourned-at-Boston-Rally-288203371.html>>. As noted in the *New York Times*,

The events in Paris almost certainly exacerbated the challenge here, already immense, of finding an impartial jury, analysts said. And they might prompt potential jurors to view Mr. Tsarnaev not as an isolated actor but as part of a global terror network. That in turn could make some people feel even more justified in wanting him put to death, the analysts said.

Seelye, *supra*.

The defense submits that the Court should not attempt to conduct voir dire and start the trial of this case while area residents – and potential jurors – still are absorbing the evolving events in Europe and reliving the events of April 2013 in Boston. It will take time for Boston-area residents, including those in the jury venire, to come to a reasoned evaluation of what, if anything, the events in Paris signify about the surviving alleged perpetrator of the Boston Marathon bombing. That process of reflection should come before – not after – the Court has had its only opportunity to question potential jurors about possible bias and pre-judgment of the defendant in this case. The screening value of voir dire will be largely nullified if jurors' biases are allowed to form and harden only *after* they have been questioned.

Even before the Paris attacks, there was no modern precedent of which we are aware for attempting to seat an impartial jury in a community that had been so recently, so grievously, and so widely affected by a single series of crimes. Now, at the very moment that this attempt is to be made, the Boston bombings are being newly placed at the center of a grim global drama. At a minimum, the Court should pause long enough to let this latest storm subside.

Conclusion

For the foregoing reasons, the Court should suspend jury selection for at least one month.

Respectfully submitted,

DZHOKHAR TSARNAEV
by his attorneys

/s/ Miriam Conrad

Judy Clarke, Esq. (CA Bar # 76071)
CLARKE & RICE, APC
1010 Second Avenue, Suite 1800
San Diego, CA 92101
(619) 308-8484
JUDYCLARKE@JCSRLAW.NET

David I. Bruck, Esq.
220 Sydney Lewis Hall
Lexington, VA 24450
(540) 460-8188
BRUCKD@WLU.EDU

Miriam Conrad, Esq. (BBO # 550223)
Timothy Watkins, Esq. (BBO # 567992)
William Fick, Esq. (BBO # 650562)
FEDERAL PUBLIC DEFENDER OFFICE
51 Sleeper Street, 5th Floor
(617) 223-8061
MIRIAM_CONRAD@FD.ORG
TIMOTHY_WATKINS@FD.ORG
WILLIAM_FICK@FD.ORG

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/s/ Miriam Conrad